

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 222, FOOD AND DRUGS ACT.

MISBRANDING OF PRESERVES.

In accordance with the provisions of section 4 of the Food and Drugs Act of June 30, 1906, and of regulation 6 of the rules and regulations for the enforcement of the act, notice is given of the judgment of the court in the case of the United States *v.* 516 Cases of Preserves, a proceeding of libel under section 10 of the aforesaid act for the seizure and condemnation of the said 516 cases of preserves, lately pending, and finally determined on April 17, 1909, in the District Court of the United States for the Southern District of Texas by rendition of a decree of condemnation and forfeiture hereinafter fully set out.

On March 20, 1909, the United States attorney filed a libel in the District Court of the United States for the Southern District of Texas praying seizure, condemnation, and forfeiture of the said preserves. To this libel Wm. Numsen & Sons, Inc., appeared, set up its claim to the preserves, filed its answer, and, together with the United States attorney, submitted the issue to the court upon an agreed statement of facts. The case having come on for final hearing on April 17, 1909, the court rendered its decree of condemnation and forfeiture in substance and in form as follows:

DISTRICT COURT OF UNITED STATES FOR SOUTHERN DISTRICT OF TEXAS, HOUSTON
DIVISION.

UNITED STATES OF AMERICA, <i>Libellant</i> ,	}	No. 23 D. L.
<i>vs.</i>		
516 CASES OF PRESERVES.		

ORDER.

In this cause it appearing to the Court that Wm. Numsen & Sons has this day filed its claim and answer to the information and monition issued out of this court wherein said claimant confesses the matters and things set forth in said information and in violation of the Act of Congress, approved June 30, 1906, entitled "An Act for preventing the Manufacture, Sale and Transportation of Adulterated or Misbranded, or

Poisonous, or Deleterious Foods, Drugs, Medicines, and liquors, and for regulating Traffic therein, and for Other Purposes", and prays the court to enter a decree and judgment in said cause as in said information requested: and claimant through its agent, Herman T. Keller, consenting thereto, and the court having heard the statements and arguments of counsel on behalf of the said claimant, and on behalf of the United States and being fully advised in the premises:

It is therefore by the Court ordered, adjudged and decreed that the 512 cases of Preserves described in the information filed in this case as 516 cases of preserves, more or less, and now in the possession of the United States Marshal for this Division and District, in the warehouse of Henke & Pillot, in Houston, Harris County, Texas, be and the same is hereby declared condemned and forfeited as misbranded within the meaning of the Act aforesaid and the said Wm. Numsen & Sons, the vendor and shipper of the said articles, appearing by its claim herewith filed, admitting that said articles were shipped contrary to the provisions of said Act of Congress, but that the same was without fraudulent intent, and that it proposes to reclaim the goods and to comply with the provisions of the law in the future, and requesting of the court the benefits and privileges of the proviso of Section 10, of the Acts of Congress aforesaid, that it be permitted to pay the costs of said libel proceedings and to execute and deliver a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the law, and the court being fully advised and satisfied in the premises:

It is further ordered that upon the payment of the costs in this proceeding of libel and upon the execution of a bond to the United States in the sum of \$4,000.00, with sufficient surety, to be approved by the Judge of this court, with the condition that said articles shall not be sold contrary to the law, within ten days herefrom, then the libel proceedings herein against said articles shall be discontinued and dismissed; otherwise, the Marshal of this District is directed after first properly labelling said 512 cases of preserves to advertise same for sale in some newspaper published in the City of Houston, Harris County, Texas, at least 15 days before the day of the sale and sell the same on the premises of the said _____ County, Texas, for cash to the highest bidder, and to hold the proceeds of such sale until further orders of this court.

(Signed) W. T. BURNS, *Judge*.

The facts in the case were as follows:

A sample of preserves labeled "Convenient brand preserves 1 full lb." had been weighed in the Bureau of Chemistry of the United States Department of Agriculture and found to contain 14 ounces of preserves, when an inspector of the said Department found in the possession of Henke & Pillot, a corporation of Houston, Texas, 516 cases of the said preserves, each case labeled "4 dozen 1 lb. convenient brand preserves," and each can labeled "Convenient brand preserves 1 full lb." The preserves had been shipped in September, 1908, to Henke & Pillot by Wm. Numsen & Sons, Baltimore, Md. It appeared that the preserves were misbranded within the meaning of section 8 of the act in that the label purported to correctly state the contents in terms of weight, which statement was incorrect.

Accordingly, on March 19, 1909, the Secretary of Agriculture notified the United States attorney for the Southern District of Texas that the aforesaid 516 cases of preserves were then in the possession

of Henke & Pillot, Houston, Tex., having been shipped as hereinbefore stated, and that they were misbranded within the meaning of the act. The United States attorney accordingly, on March 20, 1909, filed a libel in the District Court of the United States for the Southern District of Texas praying seizure, condemnation, and forfeiture of the said preserves, with the result hereinbefore stated.

The said claimant, Wm. Numsen & Sons, Inc., having complied with the terms of the aforesaid decree and section 10 of the Food and Drugs Act of June 30, 1906, the said 516 cases of preserves were re-delivered to it.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *February 23, 1910.*